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## INTERPARLIAMENTARY COOPERATION AND THE SIMPLIFIED REVISION PROCEDURES

Katarzyna Granat\*

This contribution deals with the role of national parliaments in the simplified revision procedures under Art. 48(6) and 48(7) TEU and analyses the possibilities of interparliamentary cooperation within this area. The chapter first describes the relevant provisions in the Treaties highlighting the involvement of national parliaments. It then describes in detail the national procedures implementing the simplified revision procedures in selected member states. The chapter then moves on to focus on the effects of Art. 48(6) and 48(7) TEU for interparliamentary cooperation, illustrating this particular aspect using the amendment of Article 136 TFEU as a case study. Finally, the chapter investigates the potential implications of interparliamentary cooperation in simplified treaty revisions for the overall good functioning of the EU (Art. 12 TEU).

### I. INTRODUCTION

In contrast with the past, the Lisbon Treaty sought to address the issue of amendments of the Treaties by linking the aspiration that all institutions should be included as the EU changes with the difficulties that this can pose in the enlarged EU of twenty-eight member states.<sup>1</sup> Moreover the ‘democratic deficit’ concerns at the time led to the inclusion of the Convention and national parliaments in the revision procedure helping to ‘democratize’ future reform projects.<sup>2</sup> Article 48 TEU reflects these ideas by providing for two processes: ordinary and simplified revision procedures. The latter one, which is the subject of this contribution, is a novel procedure and simplified in the sense that it does not demand calling a Convention or an intergovernmental conference and aims at accelerating Treaty revisions,<sup>3</sup> and at the same time brings ‘democratization’ by involving national parliaments.

In fact, national parliaments were involved in the amendment procedure since the Treaty on the European Union, signed in Maastricht in 1992, demanded ratification by the Member States ‘in accordance with their respective constitutional requirements.’<sup>4</sup> In addition, the representatives of national parliaments participated in the works of the European Convention entrusted with the preparation of a draft Treaty establishing a Constitution for Europe.<sup>5</sup> However, the novelty of the

**Comment [TF21]:** Don't you think there were also democratic concerns and the experience of two Conventions behind the choice to revise the clauses on treaty revisions

**Added a sentence on democracy**

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<sup>1</sup> PP Craig, *The Lisbon Treaty, Revised Edition: Law, Politics, and Treaty Reform* (Oxford, Oxford University Press, 2013) 438.

<sup>2</sup> M Urrea Corres, ‘The New Treaty Revision Procedure and the Entry into Force of the Constitutional Treaty’ (2007) Global Fellows Forum, New York University 12 available at [http://www.law.nyu.edu/sites/default/files/upload\\_documents/urreacorrespaper.pdf](http://www.law.nyu.edu/sites/default/files/upload_documents/urreacorrespaper.pdf).

<sup>3</sup> Craig, *The Lisbon Treaty* (n 1) 451.

<sup>4</sup> Art N TEU, now Art 48 TEU.

<sup>5</sup> See at <http://european-convention.europa.eu/EN/organisation/organisation2352.html?lang=EN>.

Lisbon Treaty in this respect can be seen not only in the new types of revision procedures, but it in the direct highlighting of the involvement of national parliaments in the amendment of the Treaties. Specifically, Article 12(d) TEU states that ‘national Parliaments contribute actively to the good functioning of the Union by taking part in the revision procedures of the Treaties, in accordance with Article 48 of this Treaty’.

Under Article 48(6) TEU national parliaments participate in simplified revision procedures when their approval is demanded in accordance with the constitutional requirements of the Member States for the entry into force of European Council decisions. Under Article 48(7) TEU national parliaments may oppose a European Council initiative that would allow an act to be adopted according to procedures other than those laid down in the Treaties, specifically allowing the Council to act by qualified majority instead of unanimity or switch from special to ordinary legislative procedure.

While the participation of national parliaments in the Early Warning System (EWS) established in Protocol No. 2 to the Lisbon Treaty seems to be the main new source of involvement of national parliaments at the EU level and the one on which the most academic research is focused on,<sup>6</sup> this chapter will inquire into the functions of national legislators within the treaty revision procedures. The design of these procedures in the Lisbon Treaty allows a single national parliament to veto the amendment when the amendment has to be approved according to national procedures that involve an agreement of the parliament or to oppose the so-called general passerelle. These options show the individual character of the involvement of national parliaments. In this respect, this chapter will give an overview of simplified revision procedures in selected member states: the UK, Germany, Poland, Italy and France. This sample reflects different patterns of parliamentary control of European Council meetings.<sup>7</sup> Although this chapter does not directly deal with the control of the European Council decisions, they are central for the simplified treaty revision and the strength of parliamentary control of those acts might be reflected in the design of national procedures of parliamentary involvement in the simplified revision procedures. This chapter will also inquire whether the involvement of national parliaments shows any potential for cooperation between national parliaments. In consequence, this chapter will reflect whether the participation of national parliaments in the simplified treaty revisions and interparliamentary cooperation on the very same field create a synergy contributing to the good functioning of the EU as proclaimed by Article 12 TEU.

**Comment [NL2]:** Actually, NPs were already involved in ordinary revision procedure, as they had to ratify the amendments (and to express de facto representatives in the Convention...)

**I followed your comment and pointed to the fact that they were involved before the LT.**

**Comment [GK3]:** I added this as u suggested

<sup>6</sup>See M Cartabia, N Lupo and A Simoncini (eds), *Democracy and Subsidiarity in the EU. National Parliaments, Regions and Civil Society in the Decision-Making Process* (Bologna, Il Mulino, 2013), Parts II and IV; M Goldoni, ‘The Early Warning System and the Monti II Regulation: The Case for a Political Interpretation’ (2014) 10 *European Constitutional Law Review* 90; F Fabbrini and K Granat, ‘“Yellow card, but no foul”: The role of the national parliaments under the Subsidiarity Protocol and the Commission proposal for an EU regulation on the right to strike’ (2013) 50 *Common Market Law Review* 115.

<sup>7</sup>W Wessels et al., ‘Democratic Control in the Member States of the European Council and the Euro zone summits’ available at [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474392/IPOL-AFCO\\_ET\(2013\)474392\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474392/IPOL-AFCO_ET(2013)474392_EN.pdf).

## II. SIMPLIFIED REVISION PROCEDURES IN THE LISBON TREATY

The new, simplified type of treaty revision procedures are anchored in Article 48 TEU. They were first proposed in the same form in the Constitutional Treaty.<sup>8</sup> The following sections give a brief overview of the procedures.

First, Article 48(6) TEU provides that a member state government, the European Parliament (EP) or the Commission may put forward a proposal in the European Council to revise all or part of the provisions of Part Three of the TFEU, which is a major section relating to the internal policies and action of the Union. This type of amendment is hence excluded, for example with regard to provisions concerning EU principles; provisions on non-discrimination and citizenship; or those concerning association of the EU with the overseas countries and the Union's external action. The relevant decision to amend the Treaties is adopted unanimously by the European Council after consulting the EP and the Commission and, if the amendment at stake concerns the monetary area, the European Central Bank (ECB). Importantly, the decision of the European Council 'shall not increase the competences conferred on the Union in the Treaties'. The European Council decision does not enter into force 'until it is approved by the Member States in accordance with their respective constitutional requirements'.<sup>9</sup>

According to De Witte, 'the European founding treaties distinguish themselves from the usual multilateral treaties by the *express mention* (in Art. 48 [TEU]) that ratification of a treaty amendment must happen "in accordance with constitutional requirements" of the parties'.<sup>10</sup> The rationale for this provision is to guarantee 'the protection of the national constitutional division of powers which the governments cannot set aside'.<sup>11</sup> Without the Article 48 TEU procedure, as De Witte argues, the national governments could have amended the Treaties informally by an "'ordinary" parallel agreement' and hence could have omitted European constitutional guarantees expressed in Article 48 TEU (the participation of the national parliament).<sup>12</sup> In addition, if the national governments would not follow Article 48 TEU they would act in the violation of national constitutional law requiring the approval of the national legislature.<sup>13</sup>

Member States' ratification procedures tend to share the same elements, such as referendum or parliamentary authorization to ratify which allows the parliament to control the authority capable to sign the treaty (the executive).<sup>14</sup> The vote in parliament is in fact, as Closa puts it, 'an

**Comment [NL4]:** Without a provision like this, what would change? Maybe a short explanation of why this provision makes the difference for the protection of the fundamental structures of the Member States would be useful, also using Bruno De Witte's arguments, if he adds something on this point. You could also cite in the footnote opposite views, if any.

**I added a bit more explanation why it helps division of powers**

<sup>8</sup> The counterpart of Art 48(6) TEU is Art IV-445 of the Constitutional Treaty and Art 48(7) TEU is Art IV-444 of the Constitutional Treaty. During the IGC in November 2003, already after the European Convention had concluded its work, the Italian presidency proposed that instead of individual opposition a threshold or a number of parliaments could block the revision. See Naples Ministerial Conclave: Presidency proposal, CIG 42/03 25.11.2003 at 38.

<sup>9</sup> Art 48(6)(2).

<sup>10</sup> B De Witte, 'Treaty revision in the European Union: constitutional change through international law' (2004) 35 *Netherlands Yearbook of International Law* 51, 74.

<sup>11</sup> *ibid.*, 56.

<sup>12</sup> *ibid.*

<sup>13</sup> *ibid.*

<sup>14</sup> C Closa, *The Politics of Ratification of EU Treaties* (Abingdon, Routledge, 2013) 46 ff. See that Closa uses the notion of ratification and approval alternately with regard to the simplified revision procedures (at 31-32).

inalienable component of ratification procedures,’ and although the parliaments cannot make **reservations** on EU treaties, the possibility that a national parliament will refuse to grant authorization hangs over the negotiations process.<sup>15</sup> Nonetheless, the data on the EU Treaty ratification process shows that neither such variables as different positions on EU integration within the coalition government, qualified majorities necessary to authorize the ratification, nor the participation of a second chamber, nor a change of parliamentary majority through an intervening election have been a hurdle in the ratification process in the past.<sup>16</sup> Hence while parliaments are a participant of the ratification process, they are not the obvious veto-player suspects.

**Comment [TF25]:** Are opting outs a form of reservation?

Carlos means here that they cannot affect the content of EU treaties during the ratification...I don't think he means by that opt-outs

Second, Article 48(7) TEU establishes the so-called general **passerelle**,<sup>17</sup> which was first proposed in the Constitutional Treaty.<sup>18</sup> De Witte labels the procedure of general passerelle a ‘genuine measure of flexibility in treaty amendment,’ since it allows for a ‘further deepening of integration (...) without the need for setting up an IGC and, above all, without the need for constitutional ratification of these changes by all the Member States separately’.<sup>19</sup> Specifically, the European Council, acting by unanimity and with the consent of the absolute majority of the EP,<sup>20</sup> may decide to authorise the Council to change its decision-making procedure from unanimity to a vote by qualified majority. This change may concern the areas provided in the TFEU and Title V of TEU regarding the EU’s external action and Common Foreign and Security Policy.<sup>21</sup> This type of revision has hence a broader scope than Article 48(6) TEU procedure. Similarly, the European Council may decide that a legislative act is adopted under the ordinary legislative procedure instead of the special legislative procedure (applicable to the TFEU provisions).<sup>22</sup>

**Comment [TF26]:** You might want to clarify whether this general passerelle is new or was already in the text of the Treaty (or perhaps the Constitutional Treaty)

I added some explanation here

The general passerelle explicitly embraces a role for national parliaments. First, both Article 48(7)(3) TEU and Article 6 of Protocol No.1 grant national parliaments information rights on the planned use of the general passerelle. Specifically, the European Council is obliged to notify national parliaments of its intention to adopt an act according to a changed procedure a minimum six months before the European Council adopts its decision. Within six months of the

<sup>15</sup> *ibid.*, 47.

<sup>16</sup> *ibid.*, 49-62.

<sup>17</sup> There is also a number of specific passerelle clauses (or bridging clauses) which provide for the possibility to change the voting/legislative procedure directly in the treaty text (eg Art 31(3) TEU, Art 81(3) TFEU, Art 153(2) TFEU, Art 192(2) TFEU, Art 312(2) TFEU, Art 333(1)-(2) TFEU). They provide for some procedural particularities with respect to the general passerelle clause. For example, they do not grant a veto to national parliaments (except for Art 81(3) TFEU), as well as some of them provide for a unanimous decision by the Council instead of the European Council.

<sup>18</sup> See Art IV-444 (3) Constitutional Treaty. Also previous treaties contained some passerelles but they were rarely used. See J-C Piris, *The Lisbon Treaty. A Legal and Political Analysis* (Cambridge, Cambridge University Press 2010) 107.

<sup>19</sup> De Witte, ‘Treaty revision in the European Union’ (n 10) 80.

<sup>20</sup> Art 48(7)(4) TEU.

<sup>21</sup> Excludes decisions with military implications or concerning defence.

<sup>22</sup> Art 48(7)(2) TEU.

notification date, a national parliament may oppose the initiative of the European Council and in this case the decision at stake will not be adopted. To be clear, Article 48(7)(3) TEU describes the opposition by a national parliament to the European Council initiative – not to the decision. The decision is adopted only after the six month period has elapsed and if national parliaments did not oppose the initiative. Hence between the notification to parliaments and the end of the six month period for parliaments' opposition the document at stake is a *draft* European Council decision, since the European Council may adopt the decision only in the absence of opposition.

So far, Article 48 TEU has been applied three times for amendments of the Treaties. The ordinary revision procedure was used both for the amendment of Protocol No. 36 with regard to additional seats in the EP for the period of the 2009-2014 parliamentary term<sup>23</sup> and in order to add Protocol on the concerns of the Irish people on the Treaty of Lisbon ('Irish Protocol') to the TEU and TFEU.<sup>24</sup> The only simplified treaty revision so far took place for the amendment of Article 136 TFEU and will be studied in more detail below.

The design of Article 48(6) and 48(7) TEU grants a role to national parliaments at the final stage of the revision procedure. In contrast, the ordinary revision procedure allows for a direct involvement of the representatives of the national parliaments in the examining of the amendments proposed to the Treaties in cases when the Convention is convened.<sup>25</sup> This characteristic of the Convention method of treaty revision is arguably increasing the input legitimacy of the EU by decreasing the lines of accountability between the citizen and the agents conducting the negotiations and enhancing the number of represented interests.<sup>26</sup>

Some differences between Article 48(6) TEU and the general passerelle should be also noted. For example Kiiver points out that the Article 48(7) TEU procedure 'is not strictly speaking a ratification of a Treaty amendment but a veto right *against* a Treaty amendment' in contrast to the ratification (ordinary revision procedure) or approval (simplified revision procedure) carried out by the Member States 'in accordance with their respective constitutional requirements'.<sup>27</sup> It is hence argued by some authors that since Article 48(7) TEU does not demand a 'positive

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<sup>23</sup>European Council Decision 2010/350/EU of 17 June 2010 on the examination by a conference of representatives of the governments of the Member States of the amendments to the Treaties proposed by the Spanish Government concerning the composition of the European Parliament and not to convene a Convention, [2010] OJ L 160, p. 5–9.

<sup>24</sup>European Council Decision 2013/106/EU of 11 May 2012 on the examination by a conference of representatives of the governments of the Member States of the amendment to the Treaties proposed by the Irish Government in the form of a Protocol on the concerns of the Irish people on the Treaty of Lisbon, to be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and not to convene a Convention, [2003] OJ L 60, p. 129–130.

<sup>25</sup> Art 48(3) TEU.

<sup>26</sup> T Risse, M Kleine, 'Assessing the Legitimacy of the EU's Treaty Revision Methods' (2007) 45 *Journal of Common Market Studies* 69, 75.

<sup>27</sup> Ph Kiiver, *The Early Warning System for the Principle of Subsidiarity. Constitutional theory and empirical reality* (London, Routledge, 2012) 10.

approval' of the European Council decision it is further from a classic conclusion of international treaties, although ultimately the revision still depends on the willingness of each member state.<sup>28</sup>

### III OVERVIEW OF NATIONAL PROVISIONS ON THE ROLE OF PARLIAMENTS IN THE TREATY REVISION

The aim of this section is to show in greater detail how the simplified revision procedures are structured in selected member states: the UK, Germany, Poland, Italy and France. The inquiry into these five member states is justified by the different patterns of parliamentary control of European Council meetings put forward in a study led by Wolfgang Wessels.<sup>29</sup> Although this chapter does not directly concern the control of the European Council decisions, those decisions are at the center of the simplified treaty revision and the strength of parliamentary control of those acts might be reflected in the design of national procedures of parliamentary involvement in the simplified revision procedures. Accordingly, Poland represents the 'Europe as usual' model, which follows on the system of scrutiny established for ordinary legislation. The UK exemplifies the 'government accountability' model, centered on plenary sessions after the summits to question the government policy. France is located between an 'expert' model of scrutiny based on an ex-ante and ex-post control by European Affairs Committees and the 'policy maker' represented by Germany, which emphasizes the ex-ante control. Finally, Italy with the new scrutiny powers of the parliament over the European Council meeting represents the strongest model of scrutiny.<sup>30</sup> The next sections give an overview of the national procedures for the Treaty amendment in the chosen Member States and whether they correspond with the strength of those parliaments in the scrutiny of European Council decisions.

In the UK, the European Union Act 2011 regulates in great detail the national procedure for the simplified treaty revision in Article 48(6) and (7) TEU. With regard to Article 48(6) TEU, Section 3(1) of the European Union Act provides that the decision of the European Council has to be approved by Act of Parliament (statute) and in the referendum.<sup>31</sup> With regard to the revision procedure under Article 48(7) TEU, Section 6(1) of the European Union Act demands that before the Minister of the Crown votes in favour of the European Council decision, the draft

**Comment [GK7]:** In Italy the scrutiny of the European Council's meetings does not follow the rules for the scrutiny of ordinary EU draft legislative act. There is rather an ex ante and ex post control before and after the European Council's meetings, often with the involvement of the plenary and of the President of the Council of Ministers  
See art. 4, par. 1 legge n. 234/2012

More in general, it is not clear why you refer to the procedure for the control on the European Council's meetings here. Usually parliamentary involvement in the application of Art. 48.6 and 7, as you also explain below, is regulated by ad hoc procedures, different from those of the ordinary European Council's meetings

**I changed it here a bit and added the strengthen role of the Italian parliament**

<sup>28</sup> H-J Cremer, 'Art 48 EUV', in C Calliess and M Ruffert (eds), *EUV/AEUV*, 4th edn (München, C.H.Beck, 2011) Rn 14.

<sup>29</sup> Study directed by Wessels and Rozenberg distilled altogether seven different models of parliamentary control of European Council meetings on the basis of three criteria such as timing, locus, and significance of parliamentary control. See Wessels, 'Democratic Control in the Member States' (n 7).

<sup>30</sup> The study originally included Italy in the 'Europe as usual' group. However since December 2012 Legge n 234/2012 introduced ex ante and ex post control of the European Council meetings, which often includes the prime minister and may also take place in a plenary session.

<sup>31</sup> For a detailed analysis of cases in which a referendum will be necessary see S Peers, 'The UK's European Union Bill' (2010) 12 *Statewatch Analyses* 8 available at <http://www.statewatch.org/analyses/no-111-uk-eu%20bill.pdf>.

decision must be approved by Act of Parliament (statute) and in a referendum.<sup>32</sup> The requirements are hence identical for both procedures of simplified treaty revision. The relevant distinction is that in Article 48(6) TEU procedure the parliament is involved only *after* the European Council decision is taken and needs to be approved by the Member States in accordance with their respective constitutional requirements, while under the Article 48(7) TEU procedure the parliament has to approve the draft decision *before* the prime minister votes in favour of it in the European Council. This is connected to the fact that, as Paul Craig explains, the ‘strategy’ of the framers of the European Union Act was to introduce the approval by Act of Parliament or referendum as a ‘pre-condition’ for the general passerelle.<sup>33</sup> In this situation however, the right to oppose to the European Council initiative granted by Article 48(7)(3) TEU ‘is unlikely to be needed,’ and hence no national provisions have been introduced for this procedure.<sup>34</sup> Indeed, it seems rather improbable that the parliament would use the veto after approving a draft decision in an Act of Parliament, unless the political majorities at stake would change, which is improbable taking into account the short six month period foreseen for the parliaments.

In Germany, the Bundestag and the Bundesrat have to be informed about the revisions of the Treaties. Specifically, §9(1) of the Act on Cooperation between the Federal Government and the German Bundestag in matters concerning the European Union (EUZBBG)<sup>35</sup> states that the Bundestag has a right to deliver an opinion on proposals and initiatives for decisions on the opening of negotiations to make amendments to EU Treaties. Moreover, before the final decision on the treaty amendment is taken, the federal government should ‘reach an agreement with the Bundestag’. Knowing the opinion of the Bundestag, the federal government may however take a divergent decision justified by good reasons of foreign or integration policy.<sup>36</sup> Similarly, the Annex to §9(1) of the Act on Cooperation between the Federal Government and the German Länder in Matters concerning the European Union (EUZBLG) indicates with regard to Article 48 TEU in general that the federal government informs the Bundesrat about its position and about the further negotiations as far as the interests of the Länder are at stake.<sup>37</sup>

<sup>32</sup> *ibid.*, 10.

<sup>33</sup> See further P Craig, ‘The European Union Act 2011: Locks limits and legality’ (2011) 48 *Common Market Law Review* 1915, 1930. In addition, Craig questions the legality of the pre-conditions making the approval conditional upon national constitutional requirements in cases where the Treaty does not foresee it directly, ‘there is no warrant for acceptance of such a power [of national parliament and the national electorate] in any of the deliberations on Treaty reform, nor is there any warrant for accepting that Member States can unilaterally arrogate such a power to themselves’.

<sup>34</sup> Annex to the Thirteenth Bi-annual Report on Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny: Replies of National Parliaments and the European Parliament (May 2010) 511.

<sup>35</sup> Gesetz über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union, Bundesgesetzblatt Jahrgang 2013 Teil I Nr. 36.

<sup>36</sup> §9(2) EUZBBG.

<sup>37</sup> Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union, vom 12. März 1993 (Bundesgesetzblatt Teil I Seite 313); zuletzt geändert durch das Gesetz vom 22. September 2009 (Bundesgesetzblatt Teil I Seite 3031).



The procedure for approval of the simplified treaty revision is further specified in the German Integrationsverantwortungsgesetz of 2009 (Responsibility for Integration Law).<sup>38</sup> With regard to the Article 48(6) TEU procedure §2 IntVG provides that a statute (Gesetz) in accordance with Article 23(1) of German Basic Law is necessary for the approval of European Council decisions. In short, approval by the Bundestag together with the consent of the Bundesrat is necessary.

For the Article 48(7) TEU procedure, according to §4(1) IntVG an approval of the parliament in form of statute is necessary before the German representative approves or rejects the European Council initiative. Without such statute, the German representative in the European Council is obliged to reject the European Council initiative. This regulation is hence similar to the British one. This solution is due to the Lisbon judgment of the German Federal Constitutional Court which indicated that the right of national parliaments to oppose a passerelle under Article 48(7)(3) TEU 'is not a sufficient equivalent of the requirement of ratification; therefore the approval by the representative of the German government always requires a law within the meaning of Article 23.1 second sentence, and if necessary third sentence, of the Basic Law. It is only in this way that the German legislative bodies exercise their responsibility for integration in a given case and also decide whether the level of democratic legitimation is still high enough to accept the majority decision'.<sup>39</sup>

German law distinguishes however between the statute necessary for the consent or rejection by the German representative to the European Council decision<sup>40</sup> and the self-standing right of the German parliamentary chambers to oppose the European Council's initiative.<sup>41</sup> Specifically, §10(1) IntVG states that (only) the Bundestag may oppose the general passerelle when the initiative touches upon exclusive competences of the Bund.<sup>42</sup> In all other cases, meaning those not concerning the exclusive competences of the federation, German law allows both the Bundestag and the Bundesrat to oppose the amendment at stake, without requiring any common position. Subsequently, the President of the Bundestag or of the Bundesrat accordingly informs the President of the European Council about the opposition and notifies the German government about this.<sup>43</sup>

In Poland, any decision of the European Council according to Article 48(6) TEU demands ratification.<sup>44</sup> The Polish Constitution provides for three types of ratification procedure; among those two demanding the prior agreement of the parliament expressed in a statute and one which

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<sup>38</sup> Gesetz über die Wahrnehmung der Integrationsverantwortung des Bundestages und des Bundesrates in Angelegenheiten der Europäischen Union Integrationsverantwortungsgesetz vom 22. September 2009, further as IntVG.

<sup>39</sup> Bundesverfassungsgericht, Order of 30 June 2009 - 2 BvE 2/08, Lisbon Treaty, para 319.

<sup>40</sup> §4(1) IntVG.

<sup>41</sup> §10(1) IntVG.

<sup>42</sup> The specification about the 'exclusive competences of the Bund' seems to limit the scope of objection and the rights of the Bundesrat under Art 48(7) TEU.

<sup>43</sup> §10(2) IntVG.

<sup>44</sup> Art 12(2a), Ustawa z dnia 14 kwietnia 2000, o umowach międzynarodowych.

does not require such approval. These two procedures are relevant here since they relate to international treaties concerning Poland's membership of an international organization or conferrals of competences of organs of State authority in some matters to an international organization.<sup>45</sup>

With regard to the general passerelle, both chambers of the parliament have to agree to it in a statute.<sup>46</sup> Accordingly, a motion of the government based on the parliament's statute is passed to the President of Poland who takes the decision on Poland's position in the case at stake. This motion obliges the government's representative in the European Council to vote in favour of the European Council initiative or to abstain from the vote. If the President does not take any decision on the position of Poland, the Polish representative in the European Council should reject the European Council initiative. Hence, there is no possibility that the Polish representative in the European Council will vote in a way that the Polish parliament did not approve of. If the President did not take any decision, it would have the same effect as parliament's opposition. The only problematic case is when the parliament is in favour of the amendment but the President takes no action and hence the representative would have to vote against. Yet, some indication on how such cases could be solved gives the Constitutional Tribunal which decided that although the Polish Constitution designates the President as 'the supreme representative of the Republic of Poland and the guarantor of the continuity of State authority' the President and the national government should cooperate with regard to the position of Poland during the meetings of the European Council to ensure uniformity in relations with the EU and its institutions.<sup>47</sup>

The right to oppose a European Council decision is regulated separately in the Rules of Procedures of both chambers of the Polish Parliament. In the Sejm, the initiative to raise the veto remains with the European Affairs Committee but the final decision is taken by the plenary.<sup>48</sup> In the Senat, the relevant parliamentary committee prepares an opinion which is then also discussed and voted on in the plenary.<sup>49</sup>

<sup>45</sup> Art 89(1) and Art 90(1) of Polish Constitution. The choice of an appropriate procedure for the simplified treaty revision with regard to Article 136 TFEU was at the heart of the Polish Constitutional Court's Decision. See Trybunał Konstytucyjny, K 33/12, Judgment of 26 June 2013; K Granat, 'Approval of Article 136 TFEU Amendment in Poland: The Perspective of the Constitutional Court on Eurozone Crisis law' (2015) 21 *European Public Law* 33.

<sup>46</sup> Art 14(1), Ustawa z dnia 8 października 2010, o współpracy Rady Ministrów z Sejmem i Senatem w sprawach związanych z członkostwem Rzeczypospolitej Polskiej w Unii Europejskiej.

<sup>47</sup> Case Kpt 2/08, judgment of 20 May 2009, OTK ZU 2009/5A/78. See also A Łazowski, 'Half full and half empty glass: The application of EU law in Poland (2004–2010)' (2011) 48 *Common Market Law Review* 503, 517. The case focused more specifically on who (the President or the Prime Minister) should attend the European Council meetings as the representative of Poland. If it was decided that the President attends the European Council meeting, she should cooperate with the government. One could hence conclude that the 'cooperation spirit' could go beyond the issue of attendance of a meeting and concern also with regard to European Council decisions.

<sup>48</sup> Art 34(4)(c), Art 148b(1)11b, Art 148b(4); Art 148ca, Rules of Procedure of the Sejm.

<sup>49</sup> Art 75f and Art 75g, Rules of Procedure of the Senate, demanding an absolute majority of senators in order to pass the veto for a general passerelle in contrast to the default simple majority.

**Comment [GK8]:** Very interesting!!! Any reference available and to be cited in a footnote, in terms of scholarship?

I clarified it a bit more + added a judgement of the CC that makes the issue a bit more sophisticated

In consequence, similar to the German one, the Polish system offers both the necessity that the parliament agrees to the passerelle in a statute before the vote in the European Council as well as a direct repetition of the treaty provisions granting parliaments a possibility to raise their opposition.

In Italy the new Legge 234/2012 on Italy's participation in EU affairs mandates that the government informs both chambers of parliament about initiatives concerning the simplified revision procedure according to Article 48(6) and (7) TEU.<sup>50</sup> If the European Council decision demands a prior approval of the member states according to their constitutional rules, the Italian government transmits such a decision to then be approved by the chambers.<sup>51</sup> Specifically, with regard to the Article 48(6) TEU procedure the government submits within 30 days of the European Council decision to the chambers a draft of a statute approving the decision of the European Council.<sup>52</sup> According to Article 80 of the Italian Constitution, the parliamentary chambers authorize in form of a statute the ratification of international treaties and no referendum is admissible for laws authorizing the ratification of international treaties as per Article 75 of the Constitution.

With regard to the general passerelle, the Italian provisions repeat the text of Article 48(7) TEU by stating that the parliamentary chambers should take the decision within six months from the moment of the transmission of the act at stake.<sup>53</sup> In case of a negative decision of both chambers, the chambers should inform the European Council and the government of their decision. Hence, different to Germany, the UK and Poland, the Italian parliament has only its Treaty right to oppose to the passerelle, but prior agreement of the parliament in form of a statute is not necessary for the approval of the decision in the European Council by the Italian representative.

In France, Article 88(7) of the French Constitution grants the National Assembly and the Senate the right to oppose 'any modification of the rules governing the passing of acts of the European Union in cases provided for under the simplified revision procedure for treaties'. This provision was added as a consequence of the Lisbon decision of the French Constitutional Council,<sup>54</sup> which followed the reasons of its prior decision on the Constitutional Treaty. Specifically, with regard to Article IV-445 of the Constitutional Treaty (Article 48(6) TEU) the Council identified the parliamentary authorization according to Article 53 of the French Constitution as the approval demanded 'in accordance with the respective constitutional requirements of the member states'.<sup>55</sup> Article 53 of the French Constitution provides for an approval of EU Treaties by an act of parliament.

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<sup>50</sup> Art11(1) Legge 234/2012.

<sup>51</sup> Art11(3) Legge 234/2012.

<sup>52</sup> Art11(4) Legge 234/2012.

<sup>53</sup> Art11(5) Legge 234/2012.

<sup>54</sup> Conseil constitutionnel, Decision n 2007-560 du 20 decembre 2007, para 26-29.

<sup>55</sup> Conseil constitutionnel, Decision n 2004-505 DC du 19 novembre 2004, para 36.

With regard to Article 48(7) TEU (Article IV-444 of the Constitutional Treaty) the decision of the French Constitutional Council mandates that constitutional amendment is necessary ‘in the absence of any national ratification procedure making it possible to review the constitutionality of said laws’;<sup>56</sup> and in ‘order to allow [the parliament] to exercise its prerogative’.<sup>57</sup> The particularities of the right to oppose are indicated in the Rules of Procedure of the National Assembly and of the Senate. In the Assembly, the motion opposing to the passerelle must be signed by at least one tenth of the members of the chamber within 6 months of the transmission of the initiative,<sup>58</sup> while in the Senate any senator may table a motion to oppose a European Council initiative within 4 months of its transmission to the chamber.<sup>59</sup> To pass, the motion to oppose has to be adopted by each of the chambers and in case of rejection, no motion against the same initiative can be drafted again in the Assembly or Senate.<sup>60</sup> Hence, the right of the French parliament to oppose demands an agreement of both chambers of the parliament, which is also clearly stated in the French Constitution.

In sum, France, similar to Italy, does not demand a prior approval by statute before the representative votes in the European Council. Moreover, in the same vein as Italian law, the French provisions demand a joint decision of the chambers to veto the general passerelle.

The examples studied here show some significant differences in the regulation of the simplified treaty revision procedure at the national level. While with regard to Article 48(6) TEU the revision of the Treaties demands consent of parliament in all cases (or referendum as in the UK), the main differences concern the general passerelle procedure. These include the necessary consent of the parliament needed for the initiative to be approved by the national representative in the European Council (the UK, Germany, Poland) or whether an opposition to that European Council initiative is regulated at the national level. The latter aspect is present in Italy and France, but also in Germany and in Poland which hence exhibit both types of safeguards in a form of a parliamentary statute and as an opposition. Moreover, national regulations differ on whether a joint decision of the chambers is necessary for the opposition.

The national regulations explored in this chapter prove that there is some link between the practice of scrutiny of European Council summits and the necessity of an act of parliament allowing the executive to vote in favour of the passerelle in the European Council. For example, the ‘policy maker’ model of the German parliament explains the additional safeguard in a form of a statute granted to this parliament, similarly as in the UK which is based on the governmental accountability to the parliament. In Poland which exhibits the weak ‘Europe as usual’ model, a prior statute is necessary, which means that for a passerelle an additional hurdle was put in place.

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<sup>56</sup> *ibid*, para 35.

<sup>57</sup> *ibid*, para 41.

<sup>58</sup> Art 151-12(3), Rules of Procedure of Assemblée nationale.

<sup>59</sup> Art 73i(1), Rules of Procedure of Sénat.

<sup>60</sup> Art 151-12(9), Rules of Procedure of Assemblée nationale; Art 73i(1)(8) Rules of Procedure of Sénat.

In Italy, on the contrary, the strong ex ante and ex post scrutiny of European Council decisions may seem to be a sufficient safeguard and hence there is no requirement of a prior statute in Italy. This reasoning might be similar for the lack of prior statute in France, which places itself not far from Italy in Wessel's model. In sum, because the stronger models of oversight of European Council decisions (Germany and Italy), as well the weaker ones (Poland, the UK and France) have taken different approaches to the prior statute requirement, there does not seem to be much of an overlap with the categories of Wessel's study. Hence, the passerelle might present a very special case of parliamentary scrutiny of EU affairs.

**Comment [KG9]:** I changed this paragraph a bit to reflect how Wessel's model interacts with the procedures for passerelle

The broader explanation of the additional safeguards might be however connected with the view of the German Constitutional Court in the Lisbon judgment that '[i]t would be incompatible with the constitutional requirement of a parliamentary decision if the requirement of a time-limit could construe in concrete terms the possible silence on the part of the legislative bodies as their approval'.<sup>61</sup> In other words, the principle of parliamentary involvement requires active, explicit approval by the legislatures in order to allow to the government to support the revision of the treaty. This argument of the German Court could also be behind the procedures introduced in the UK and in Poland.

Under Article 48(7) TEU, the paradox of providing for both the statute necessary for the approval or rejection of the decision in the European Council (stemming from national law) and the right to opposition (stemming from EU law but specified in national law) is that the former 'consumes' the latter. If a statute is necessary for the approval of a European Council decision by the member of the executive, then there is no need for the parliament to have a separate right to oppose European Council initiatives. In other words the parliament may express its opposition simply by not giving its consent in the form of the statute necessary for the German representative to vote in favour. There is basically no chance that the parliament grants a consent for a national representative to vote in favour of adoption of the European Council decision when it would also plan to use its right to oppose expressed in Article 48(7)(3). The main difference here is arguably 'psychological': where a statute is needed for the vote of the representative in the European Council, it will be still the head of state or government that vetoed the passerelle. This is also typical to many decisions taken under unanimity in the legislative process. In contrast the right to oppose comes from the parliament directly, which adds drama, as is the institution democratically linked directly with its citizens.

The final remark concerns the notion of 'national parliament' applied in Article 48(7) TEU. In contrast to the possibility of issuing reasoned opinions under the EWS, which explicitly grants such a right to a national parliament and to a chamber thereof, the general passerelle indicates that a national parliament may oppose a European Council initiative. In consequence it seems that in the case of bicameral parliaments (see the example of France and Italy above) a joint

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<sup>61</sup>Bundesverfassungsgericht (n 39) para 320.

opinion of both chambers is necessary.<sup>62</sup> On the contrary, in some of Member States there is explicitly no plan to adopt a joint position at all (the Netherlands),<sup>63</sup> or national provisions are not provided for and hence in line with the Treaty a joint position of the chambers will be necessary (Poland). Yet, because most of the studied national systems introduced a distinct parliamentary veto on the government's decision in the Council, the need for a joint position of both chambers under Article 48(7)(3) might be rather rare.<sup>64</sup>

#### IV. INSTITUTIONAL POSSIBILITIES OF INTERPARLIAMENTARY COOPERATION

Both types of the treaty revision procedure focus on an individual parliament. First, the simplified revision procedure on the basis of Article 48(6) TEU refers to the approval by the member states in accordance with their respective constitutional requirements, which includes an approval by a national parliament. Second, the general passerelle is directly oriented towards an individual parliament by granting it a right to opposition. In fact, both of the simplified treaty revision types allow a single parliament to stop revisions of the Treaties: an approval by all Member States is necessary for the entry into force of an approved European Council decision in the first case and the European Council may adopt a decision only '[i]n the absence of opposition' of national parliaments in the second case. These cases are also different from the EWS. Although the EWS allows a national parliament to draft a reasoned opinion on subsidiarity violation grounds, it does not grant opposition rights to individual parliaments unless certain thresholds of numbers of reasoned opinions are met. An element of similarity between the EWS and the simplified treaty revision procedure is however that both grant national parliaments a 'negative' blocking role in the EU decision-making process, in contrast to proposing their own initiatives.<sup>65</sup> How can we hence reconcile the single-parliament-centered and negative role of national legislatures with the possibility of interparliamentary cooperation?

Interparliamentary cooperation seems to play an important role post-Lisbon. Crum and Fossum note a growing trend of cooperation within the 'multilevel parliamentary field' encompassing national and supranational parliamentary institutions participating in the EU decision-making process.<sup>66</sup> Their assessment of this cooperation is positive: as 'parliaments are increasingly oriented to one another; each is becoming an intrinsic part of the others' operating

<sup>62</sup> See especially in Spain, where Art 8(2) of Ley 24/2009 directly states that both chambers of the Spanish parliament have to ratify the proposed opposition. Hence, if one chamber disagrees with the ratification, there will be no opposition to the European Council initiative from the Spanish parliament. See also Annex to the Thirteenth Bi-annual Report on Developments (n 34) 464.

<sup>63</sup> For example in the Netherlands. See Annex to the Thirteenth Bi-annual Report on Developments (n 34) 349.

<sup>64</sup> This issue was signaled by House of Lords, Select Committee on European Union, Tenth Report, Session 2004-2005, para 3.16.

<sup>65</sup> One of the proposals for a positive contribution of national parliaments in the EU is 'green card' proposed by the House of Lords that a number of national parliaments working together makes constructive policy or legislative suggestions. See House of Lords, European Union Committee, 9th Report of Session 2013-14, para 58.

<sup>66</sup> B Crum and J E Fossum, 'Introduction' in B Crum and J Erik Fossum (eds), *Practices of interparliamentary coordination in international politics* (Colchester, ECPR, 2013) 5ff.

environment'.<sup>67</sup> The interparliamentary networks are distributed according to bilateral-multilateral and formal-informal lines.<sup>68</sup> This chapter will focus on multilateral networks, including formal and informal networks which can offer relevant forums of interparliamentary cooperation by simplified revision procedures.

First, the EU Speaker's Conference aims at 'safeguarding and promoting the role of parliaments and carrying out common work in support of the interparliamentary activities'.<sup>69</sup> It meets at least once a year and involves the speakers of parliaments of EU Member States and the EP's President.<sup>70</sup> The Interparliamentary EU information exchange, IPEX, was created in 2006 following the recommendations of this conference.<sup>71</sup> Since June 2011, when the new version of the IPEX platform was launched, it includes inter alia a possibility for national parliaments to make known its opposition in accordance with Article 48(7) TEU and 81(3) TFEU. The second relevant forum for parliamentary cooperation from the perspective of this chapter is the Conference of the EU affairs committees of the national parliaments and the representatives of the EP (COSAC). The COSAC, as indicated in Article 10 of Protocol No. 1, 'promote[s] the exchange of information and best practice between national Parliaments and the European Parliament'. Third, the informal network of the permanent representatives of the national parliaments in the EP (NPRs) 'facilitate[s] informal, day-to-day cooperation',<sup>72</sup> and provides information to national members of the parliament on EU issues.<sup>73</sup> Specifically, NPRs report on EU developments and political issues on a weekly basis or *ad hoc* on urgent matters or such matters that are interesting only for a limited number of MPs.<sup>74</sup> Högenauer and Neuhold indicate that national representatives play a representational function, by building relationships between members of parliaments and EU institutions, such as organizing visits of national MPs to the EP, liaising with the national MEPs or participating in inter-parliamentary conferences.<sup>75</sup> Finally, NPRs enable a 'bridge-building function across national parliaments' by directly exchanging

<sup>67</sup> B Crum and J E Fossum, 'Conclusion' in B Crum and J E Fossum (eds), *Practices of interparliamentary coordination in international politics* (Colchester, ECPR, 2013) 252.

<sup>68</sup> A Buzogány, 'Learning from the best? Interparliamentary networks and the parliamentary scrutiny of EU decision-making' in B Crum and J E Fossum (eds), *Practices of interparliamentary coordination in international politics* (Colchester, ECPR, 2013).

<sup>69</sup> Art 2 of the Stockholm Guidelines for the Conference of Speakers of the EU, available at: <http://www.ipex.eu/IPEXL-WEB/euspeakers/getspeakers.do>.

<sup>70</sup> See C Fasone, 'Ruling the (dis-)order of interparliamentary cooperation: the Conference of EU Speakers', in this Volume.

<sup>71</sup> See the History of EU Speakers Conference at <http://www.ipex.eu/IPEXL-WEB/euspeakers/getspeakers.do>.

<sup>72</sup> V Knutelská, 'Cooperation among national parliaments: an effective contribution to EU legitimization?' in B Crum and J E Fossum (eds), *Practices of interparliamentary coordination in international politics* (Colchester, ECPR, 2013) 38.

<sup>73</sup> A-L Högenauer and C Neuhold, 'National Parliaments after Lisbon: Administrations on the Rise' OPAL Online Paper Series 12/201316 available at [http://www.opal-europe.org/index.php?option=com\\_content&view=article&id=76&Itemid=108](http://www.opal-europe.org/index.php?option=com_content&view=article&id=76&Itemid=108). See also Anna-Lena Högenauer and Andreja Pegan, *The role of parliamentary administrations in interparliamentary cooperation*, in this Volume.

<sup>74</sup> Eleventh Bi-annual Report on Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny (May 2009) 28.

<sup>75</sup> Högenauer and Neuhold, 'National Parliaments after Lisbon' (n 73) 16.

information across national parliaments about the stance of their national parliament on a specific issue.<sup>76</sup> This was already visible in the case of cooperation for gaining enough votes to trigger a ‘yellow card’ against the Monti II proposal under the EWS where the NPRs played a leading and effective role.<sup>77</sup>

The following section explores the possible fora and ways of interparliamentary cooperation by national parliaments within the simplified revision procedure. The sections below will elaborate on these issues taking the amendment of Article 136 TFEU as a case study.

## V. CASE STUDY OF ARTICLE 136 TFEU AMENDMENT

In October 2010, at the time of the deep Eurozone crisis, EU Heads of State or Government agreed that Member States should establish ‘a permanent crisis mechanism to safeguard the financial stability of the euro area as a whole’ in order to ensure balanced and sustainable growth in the EU.<sup>78</sup> To this effect, ‘a limited treaty change was required’, yet without modifying Article 125 TFEU (the so-called ‘no bail-out’ clause).<sup>79</sup> In December 2010, the Belgian government put forward a proposal for revising Article 136 TFEU concerning the adoption of measures for Eurozone Member States by the Council ensuring the functioning of economic and monetary union. In March 2011, within the simplified revision procedure under Article 48(6) TEU the European Council adopted Decision 2011/199 to amend Article 136 TFEU accordingly.<sup>80</sup> The newly inserted paragraph 3 states that ‘Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality’.

The question whether the requirements of Article 48(6) TEU for a valid treaty amendment were met was subject to the judicial review by the European Court of Justice (ECJ) within the procedure of preliminary reference from the Supreme Court of Ireland.<sup>81</sup> Specifically, the ECJ had to review whether the amendment concerned provision of Title III of TFEU and whether it did not increase the competences conferred on the Union in the Treaties. With regard to the first matter, the ECJ stated that while the Decision 2011/199 amends a provision of Part Three of the TFEU (Article 136 TFEU) it ‘formally satisfies’ the condition imposed by Article 48(6) TEU

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<sup>76</sup> *ibid.*

<sup>77</sup> See I Cooper, ‘A Yellow Card for the Striker: How National Parliaments Defeated EU Strikes Regulation’ 8, available at [http://euce.org/eusa/2013/papers/12g\\_cooper.pdf](http://euce.org/eusa/2013/papers/12g_cooper.pdf).

<sup>78</sup> European Council, Conclusions, 28-29 October 2010, EUCO 25/1/10, point I 2.

<sup>79</sup> *ibid.*

<sup>80</sup> European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro, [2011] OJ L 91, p. 1–2.

<sup>81</sup> Case 370/12 *Pringle* ECLI:EU:C:2012:756. See also B De Witte and T Beukers ‘The Court of Justice approves the creation of the European Stability Mechanism outside the EU legal order: *Pringle*’ (2013) 50 *Common Market Law Review* 805.



that the simplified revision procedure may concern solely provisions of that treaty part,<sup>82</sup> and in addition, does not affect any other provision of the Treaty, especially in Part One in the area of monetary policy.<sup>83</sup> Regarding the increase of competence condition, the Court found that Decision 2011/119 in itself does not confer any new competence on the EU and does not create a legal basis which would enable the EU to undertake an action which was not possible before the amendment.<sup>84</sup> In sum, the ECJ declared Decision 2011/199 valid.

In the meantime, following Article 48(6) TEU, the Decision 2011/199 required approval by member states ‘in accordance with their respective constitutional requirements’ in order to enter into force.<sup>85</sup> The need for parliamentary cooperation with regard to the Article 136 TFEU amendment arose at the point of the approval procedures due to the complexity of the Eurozone related reforms at the time. The issue at stake was that in addition to the revision of the Lisbon Treaty, two new inter-governmental treaties were also agreed to and put for ratification. The first of them, the Treaty Establishing the European Stability Mechanism launches a new financial institution, the European Stability Mechanism (ESM) ‘to mobilise funding and provide stability support under strict conditionality, appropriate to the financial assistance instrument chosen, to the benefit of ESM Members which are experiencing, or are threatened by, severe financing problems, if indispensable to safeguard the financial stability of the euro area as a whole and of its Member States’.<sup>86</sup> Although the ESM Treaty was ‘closely intertwined’ with the amendment of Article 136 TFEU,<sup>87</sup> the ECJ underlined in its *Pringle* judgment that Member States may conclude and ratify the ESM Treaty before the entry into force of Decision 2011/199.<sup>88</sup> Second, the Treaty on Stability, Coordination and Governance (TSCG) signed enshrining the so-called fiscal compact with a requirement for national budgets that the annual structural government deficit does not exceed 0.5% of GDP at market prices was under ratification at the same time as the amendment of Article 136 TFEU.<sup>89</sup>

The highly relevant issues of the financial crisis that the Lisbon Treaty amendment and the two new treaties dealt with and the complexity of the approval and ratification processes of three different legal instruments made it difficult for national parliaments to understand the scope of change. In order not to stay in the dark about the relevant issues surrounding the new legal mechanisms directed against the Eurozone crisis, some interparliamentary cooperation was initiated in order to gather information and monitor the ratification process. The idea to launch interparliamentary cooperation was a ‘consensual decision’ addressing many requests that the

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<sup>82</sup> *ibid*, para 46.

<sup>83</sup> *ibid*, para 47-69.

<sup>84</sup> *ibid*, para 73.

<sup>85</sup> In fact all the national parliaments approved the Decision 2011/199 before the *Pringle* judgment. None of the member states held a referendum. See [http://www.europarl.europa.eu/RegData/etudes/note/join/2013/462455/IPOL-AFCO\\_NT\(2013\)462455\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2013/462455/IPOL-AFCO_NT(2013)462455_EN.pdf).

<sup>86</sup> Art 3 ESM Treaty.

<sup>87</sup> K Tuori and K Tuori, *The Eurozone Crisis A Constitutional Analysis* (Cambridge, CUP, 2014) 145.

<sup>88</sup> *Pringle* (n 81) para 185.

<sup>89</sup> Art 3 TSCG.

national parliamentary representatives received from national parliaments (especially the French parliament, the German Bundestag and the Portuguese parliament), institutions and academia.<sup>90</sup> On the side of the NPRs in Brussels the idea of creating a special database containing all the relevant information on the state of play within the ratification of Article 136 TFEU amendment, but also the ESM and the TSCG Treaty was especially pursued by the representatives of the Austrian, Portuguese and Spanish parliaments in Brussels.<sup>91</sup> This database was being updated ‘in real time’ by the respective national parliamentary representatives in Brussels, reflecting the status of ratification of the Article 136 TFEU, ESM Treaty and the TSCG. In this respect, the database was useful for the parliaments in order to know ‘whether the ratification of the European Council decision or of the new treaties was high on the agenda in a specific national parliament’.<sup>92</sup> At the same time, the EP AFCO committee kept, in cooperation with, among others NPRs in Brussels, its own database which was following the ratification processes at national level.<sup>93</sup> In sum, the exchange of information was ‘intensive’ and presented a ‘good rehearsal of interparliamentary cooperation in real time’.<sup>94</sup>

In contrast to this, COSAC did not seem to function as a relevant forum for interparliamentary cooperation during the amendment of Article 136 TFEU. The revision of the Treaties was not an item on the COSAC agenda and remained only on the sidelines of the proceedings. For example, the XLV COSAC’s ordinary meeting in May 2011 in Hungary and the XLVII COSAC Chairpersons’ meeting in January 2012 in Copenhagen discussed Eurozone crisis related issues.<sup>95</sup> However, none of the COSAC Bi-annual reports addressed the question of Article 136 TFEU amendment.<sup>96</sup>

In the same vein, the Conference of the Speakers of EU Parliaments did not address the Article 136 TFEU amendment. In contrast, the ratification of the TSCG Treaty was an important point on the agenda of the conference: the participants ‘shared information on the ratification of the Treaty and the implementation of its provisions in Member States’.<sup>97</sup>

<sup>90</sup> Interview with B. Dias Pinheiro, former NPR for the Assembleia da República, January 2015.

<sup>91</sup> *ibid.*

<sup>92</sup> *ibid.*

<sup>93</sup> See document ‘Article 136 TFEU, ESM, Fiscal Stability Treaty. Ratification requirements and present situation in the Member States’ requested by the European Parliament’s Committee on Constitutional Affairs at the Directorate General for Internal Policies at 10 available at [http://www.europarl.europa.eu/RegData/etudes/note/join/2013/462455/IPOL-AFCO\\_NT\(2013\)462455\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2013/462455/IPOL-AFCO_NT(2013)462455_EN.pdf).

<sup>94</sup> Interview with B. Dias Pinheiro (n 90).

<sup>95</sup> ‘The way to recovery: Economic governance, Europe 2020 Strategy and European Semester; point of debate, Programme of the XLV COSAC meeting <http://www.cosac.eu/hungary2011/ordinary-meeting-of-xlv-cosac-29-31-may-2011/>; ‘The sovereign debt crisis, European Economic Governance and democratic accountability’ at COSAC XLVII Chairpersons’ 29-30 January 2012 Copenhagen, Denmark <http://www.cosac.eu/denmark2012/meeting-of-the-chairpersons-of-cosac-29-30-january-2012/>

<sup>96</sup> Compare Eighteenth COSAC Bi-annual Report on EU Practices and Procedures which addressed the question of the TSCG ratification and possible role of Art 13 TSCG conference.

<sup>97</sup> Presidency Conclusions of the Conference of Speakers of the European Union Parliaments Warsaw, 20 – 21 April 2012 at 5 available at <http://www.ipex.eu/IPEXL-WEB/euspeakers/getspeakers.do?id=082dbcc530b1bef60130b6491e6c001d>.

In sum, as the current practice of interparliamentary cooperation shows with regard to the EWS, the network of the permanent representatives of the national parliaments in Brussels remains the crucial forum.

## VI. CONTRIBUTION TO THE GOOD FUNCTIONING OF THE EU

Article 12 TEU states that '[n]ational parliaments contribute actively to the good functioning of the Union' and lists specific functions of national parliaments from the Lisbon Treaty, including both themes of this contribution: participation in the revision procedures of the Treaties, in accordance with Article 48 TEU, and participation in interparliamentary cooperation between national parliaments and with the EP, in accordance with Protocol No.1. As argued by Kiiver, although oddly drafted, Article 12 TEU presents 'an attempt to upgrade the visibility of national parliaments in a prominent part of the EU Treaty'.<sup>98</sup>

Yet, what is much more at stake here than the visibility of parliaments is that their participation is *meaningful* for the EU decision-making process, with an important, useful quality or purpose. In a sense this is much more visible in the EWS where the reasoned opinions may lead to changes in the draft legislative acts proposed by the Commission, at different stages of the process. Similarly, interparliamentary cooperation in the EWS turned out to be very useful for reaching the 'yellow card' thresholds. In contrast the involvement of national parliaments in both types of the simplified revision procedures has a much more ex-post character, since the parliaments participate in the approval of an amendment or can oppose to an already drafted initiative of the European Council. Nonetheless, the position of national parliaments in these procedures is much more powerful and individualistic than under the EWS, as even a single parliament can block the entire amendment procedure. In this sense the participation of parliaments has very serious consequences.

The simplified revision procedure can be meaningfully enhanced by the interparliamentary cooperation, which was depicted in the case of the Article 136 TFEU amendment, where the cooperation focused on the exchange of information 'in real time' on highly complex issues of the Eurozone crisis. Although it might be hard to measure the impact of interparliamentary cooperation in the case at stake, in fact, the approval of the European Council decision was successful. Interparliamentary cooperation in this field may hence offer a counterbalance to the negative role of parliaments in the revision of the Treaties by sharing information on the stage of the amendment process and enhancing the understanding of the complex revision procedures, such as in the area of the Eurozone crisis.

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<sup>98</sup> Kiiver, *The Early Warning System* (n 27) 6. Barnard and Peers add that this provision is 'descriptive rather than prescriptive'. See C Barnard and S Peers, *European Union Law* (Oxford, OUP, 2014) 138.

## VII. CONCLUSION

This chapter has studied the role of national parliaments within the simplified revision procedures of Article 48(6) and 48(7) TEU. These new provisions introduced by the Lisbon Treaty grant individual parliaments a prominent role in the revision of the Treaties. Specifically, under Article 48(6) TEU, an amendment enters into force only if approved according to national constitutional requirements, which in the current EU involves a national legislature in all the member states. Similarly, within the general passerelle of Article 48(7) TEU, a successful revision demands that none of the national parliaments opposes to the procedural change in the decision making process.

The overview of different national designs of the simplified revision procedures shows some divergence mostly in the approval of the ‘general passerelle’ at national level. Specifically, the studied jurisdictions Germany, Poland, Italy and France (except for the UK) provided for the general passerelle by adopting national provisions to this effect. However, in addition to that the UK, Germany and Poland introduced a requirement of parliamentary statute necessary for the relevant national representative to vote in favour of the passerelle in the European Council.

This chapter has also studied the possibility for national parliaments to cooperate within the simplified revision procedures. As the example of the Article 136 TFEU amendment shows, national parliaments did pursue an increased exchange of information with regard to the approval of the new provision. The exchange helped national parliaments to follow ‘in real time’ the complex issues around different Eurozone related changes, namely the ESM Treaty and the TSCG, which were under ratification in addition to the Article 136 TFEU amendment. Finally, such interparliamentary cooperation seems to contribute to the good functioning of the EU as expressed in Article 12 TEU, by offering a meaningful way for parliaments to participate in the revision process as informed actors, as well as providing a counterbalance to the rather negative blocking role of national parliaments in the revision process.